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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Eleanor A. Butkiewicz,)	Case No.:
)	
Plaintiff,)	COMPLAINT FOR DAMAGES
)	PURSUANT TO THE FAIR CREDIT
v.)	REPORTING ACT, 15 U.S.C. § 1681,
)	ET SEQ.
Experian Information Solutions,)	
Inc. and Synchrony Bank,)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	
)	
)	
)	
)	

INTRODUCTION

1. The United States Congress has found the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods

1 undermine the public confidence, which is essential to the continued
2 functioning of the banking system. Congress enacted the Fair Credit
3 Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), to insure fair and
4 accurate reporting, promote efficiency in the banking system, and protect
5 consumer privacy. The FCRA seeks to ensure consumer reporting agencies
6 exercise their grave responsibilities with fairness, impartiality, and a respect
7 for the consumer’s right to privacy because consumer reporting agencies
8 have assumed such a vital role in assembling and evaluating consumer credit
9 and other information on consumers. The FCRA also imposes duties on the
10 sources that provide credit information to credit reporting agencies, called
“furnishers.”

- 11 2. ELEANOR A. BUTKIEWICZ (“Plaintiff”), by Plaintiff’s attorneys, brings
12 this action to challenge the actions of EXPERIAN INFORMATION
13 SOLUTIONS, INC. (“Experian”) and SYNCHRONY BANK
14 (“Synchrony”) (or jointly as “Defendants”) with regard to erroneous reports
15 of derogatory and negative credit information made by Defendants to
16 national reporting agencies, and for failure of Defendants to properly
17 investigate, and this conduct caused Plaintiff damages.
- 18 3. Plaintiff makes these allegations on information and belief, with the
19 exception of those allegations that pertain to Plaintiff, or to Plaintiff’s
20 counsel, which Plaintiff alleges on personal knowledge.
- 21 4. While many violations are described below with specificity, this Complaint
22 alleges violations of the statute cited in its entirety.
- 23 5. Unless otherwise stated, all the conduct engaged in by Defendants took
24 place in Arizona.
- 25 6. Any violations by Defendants were knowing, willful, and intentional, and
26 Defendant did not maintain procedures reasonably adapted to avoid any such
27 violation.
- 28 7. Unless otherwise indicated, the use of Defendants’ name in this Complaint

1 includes all agents, employees, officers, members, directors, heirs,
2 successors, assigns, principals, trustees, sureties, subrogees, representatives,
3 and insurers of Defendants' named.

4 JURISDICTION AND VENUE

- 5
- 6 8. This Court has federal question jurisdiction because this case arises out of
7 violation of federal law. 15 U.S.C. §1681 *et seq.*; 28 U.S.C. §1331;
8 Jurisdiction arises for Plaintiff's supplemental state claims under 28 U.S.C.
9 § 1367.
- 10 9. This action arises out of Defendants' violations of the Fair Credit Reporting
11 Act, 15 U.S.C. §§ 1681-1681(x) ("FCRA").
- 12 10. Venue is proper in the United States District Court for the District of
13 Arizona pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of
14 Maricopa County, the State of Arizona and Defendants are subject to
15 personal jurisdiction in the County of Maricopa, State of Arizona as they
16 conduct business there, and the conduct giving rise to this action occurred in
17 Arizona. 28 U.S.C. § 1391(b)(2).

17 PARTIES

- 18 11. Plaintiff is a natural person residing in the County of Maricopa, State of
19 Arizona. In addition, Plaintiff is a "consumer" as that term is defined by 15
20 U.S.C. § 1681a(c).
- 21 12. Defendant Experian is a corporation doing business in the State of Arizona.
- 22 13. Defendant Synchrony is a bank doing business in the State of Arizona.
- 23 14. Defendant Synchrony is a furnisher of information as contemplated by 15
24 U.S.C. § 1681s-2(b) that regularly and in the ordinary course of business
25 furnishes information to a consumer credit reporting agency.
- 26 15. Defendant Experian is a national credit reporting agency, doing business in
27 Arizona, with a principal place of business in Ohio.
- 28

GENERAL ALLEGATIONS

16. At all times relevant, Plaintiff was an individual residing within the State of Arizona.
17. At all times relevant, Defendants conducted business in the State of Arizona.
18. On or about May 28, 2014, Plaintiff filed for a Chapter 7 Bankruptcy in the United States Bankruptcy Court for the District of Arizona in order to obtain a fresh start and rebuild her credit. Plaintiff's case was assigned Case Number 2:14-bk-08175-DPC (the "Bankruptcy").
19. The obligations ("Debt") to each defendant were scheduled in the Bankruptcy and Defendants, the Creditors, received notice of the Bankruptcy.
20. On or about September 5, 2014, Plaintiff received a Bankruptcy discharge.
21. None of the Defendants filed any proceedings to declare their Debt "non dischargeable" pursuant to 11 U.S.C. § 523 *et seq.*
22. Defendants also did not request relief from the "automatic stay" codified at 11 U.S.C. §362 *et seq.* while the Plaintiff's Bankruptcy was pending to pursue the Plaintiff on any *personal* liability for any of the underlying Debts.
23. Accordingly, the Debt to each defendant was discharged through the Bankruptcy.
24. Further, while the automatic stay was in effect during the Bankruptcy, it was illegal for any of the Defendants to report any post-Bankruptcy derogatory collection information.
25. Defendants' attempt to collect upon their respective Debt by reporting post-Bankruptcy derogatory information was therefore false or inaccurate and prohibited by the automatic stay or Discharge.
26. Plaintiff subsequently learned that each of the named Defendants reported post-Bankruptcy derogatory credit information regarding the obligations on Plaintiff's credit reports, thereby causing erroneous, inaccurate, and negative credit information in Plaintiff's credit files.

- 1 27. The Consumer Data Industry Association (“CDIA”) is an international trade
2 association of corporate members involved in credit reporting and other
3 consumer-related services.
- 4 28. To help furnishers comply with their requirements under the FCRA, the
5 CDIA publishes standard guidelines for reporting data called the Metro 2
6 Format.
- 7 29. The Metro 2 Format guidelines for credit reporting are nearly identical for
8 reports made during the “Months Between Petition Filed and BK
9 Resolution” and after “Plan Completed.” *See* CDIA Credit Reporting
10 Resource Guide, page 6-17, 18.
- 11 30. Notably, the payment history and account status guidelines are the same,
12 meaning that the payment history and account status should be reported the
13 same way **both during and after** bankruptcy proceedings. (emphasis
14 added) *Id.*
- 15 31. The continued reporting of erroneous, inaccurate, and derogatory
16 information negatively impacted Plaintiff’s credit and her “fresh start”.

17 **Synchrony Bank Misreported Credit Information**

- 18 32. In an Experian credit report dated November 2, 2015, Synchrony reported
19 the following inaccurate, derogatory information:
- 20 • Account No. 523914104447.....: Post-bankruptcy information
21 for the following dates: June 2014-August 2014 (Charge Off).
- 22
- 23 33. Synchrony should not have reported derogatory information on Plaintiff’s
24 account after May 28, 2014, because Plaintiff filed for Bankruptcy on May
25 28, 2014.
- 26 34. On or about December 9, 2015, Plaintiff disputed Synchrony’s reported
27 information regarding the Debt pursuant to 15 U.S.C. § 1681I(a)(2) by
28

1 notifying Experian, in writing, of the incorrect and inaccurate credit
2 information furnished by Synchrony.

3 35. Specifically, Plaintiff sent a letter, certified, return receipt, to Experian (the
4 “Experian Dispute Letter”), requesting the above inaccurate and incorrect
5 derogatory information be removed as follows:

- 6
- 7 • Account #523914104447....: This account was discharged in
8 my Bankruptcy which was filed on 05/28/2014 and discharged
9 09/05/2014, bearing Case No. 2:14-bk-08175-DPC in the
10 District for Arizona. There should be no derogatory reporting
11 after the filing date. Specifically, please remove the inaccurate,
12 derogatory information for the following post-bankruptcy dates:
13 June 2014-August 2014 (Charge Off).
- 14

15 36. The Experian Dispute Letter further requested that Experian:

16

- 17 • Immediately delete this account and the disputed derogatory
18 information from my credit report. The discharged debt should be
19 reported with an account balance of \$0 with a status of “current”.
- 20 • Further, there should be no post-bankruptcy activity reported on
21 this account. The date of last activity on this account should pre-
22 date my bankruptcy filing date, 05/28/2014, since a default on this
23 account occurred no later than the Bankruptcy filing date.
- 24 • Any post-bankruptcy derogatory information should be
25 immediately deleted from [Plaintiff’s] report.
- 26 • If [Experian] do[es] not immediately delete this from
27 [Plaintiff’s] credit report, please include a 100-word statement in
28

1 my credit report of all of the disputed information contained in this
2 letter regarding this account.

3
4 37. Upon information and belief, Experian timely notified Synchrony of
5 Plaintiff's dispute, but Synchrony continued reporting derogatory
6 information.

7 38. Synchrony and Experian were required to conduct a reinvestigation into this
8 specific account on Plaintiff's consumer report pursuant to 15 U.S.C.
9 §1681i.

10 39. On or about January 4, 2016, Plaintiff received notification from Experian
11 that Synchrony and Experian received notice of Plaintiff's dispute pursuant
12 to 15 U.S.C. § 1681i(a)(6), and Defendants verified the account had been
13 "updated."

14 40. Surprisingly, rather than remove all the derogatory information from
15 Plaintiff's report, Synchrony and Experian simply left derogatory
16 information on Plaintiff's report. Specifically, Synchrony and Experian
17 reported the following inaccurate, derogatory information:

- 18 • Account #523914104447.....: Post-bankruptcy information for
19 the following dates: June 2014-August 2014 (Charge Off).

20
21 41. According to Experian, a "Charge Off" is the action of transferring accounts
22 deemed uncollectible to a category such as bad debt or loss. Collectors will
23 usually continue to solicit payments, but the accounts are no longer
24 considered part of a company's receivable or profit picture. *See* Experian's
25 Glossary of Credit Terms: [http://www.experian.com/credit-](http://www.experian.com/credit-education/glossary.html#c)
26 [education/glossary.html#c](http://www.experian.com/credit-education/glossary.html#c).

27 42. Plaintiff's account with Synchrony was not a "Charge Off", but instead it
28 was an account included in her bankruptcy.

- 1 43. By reporting a "Charge off" in the months of June 2014-August 2014
2 Synchrony is reporting inaccurate post-bankruptcy information.
- 3 44. By reporting a "Charge off" in the months of June 2014-August 2014
4 Synchrony is attempting to collect upon an account that is no longer valid.
- 5 45. Synchrony did not comply with CDIA's Metro 2 reporting standards when it
6 reported post-bankruptcy information.
- 7 46. Plaintiff's account was not reported by Synchrony as the Metro 2 Format
8 instructs, making the reporting inaccurate.
- 9 47. Synchrony and Experian, upon receipt of Plaintiff's dispute, failed to
10 conduct an investigation with respect to the disputed information as required
11 by 15 U.S.C. § 1681s-2(b)(1)(A).
- 12 48. Synchrony and Experian failed to review all relevant information provided
13 by Plaintiff in the dispute to Experian, as required by and in violation of 15
14 U.S.C. § 1681s-2(b)(1)(B).
- 15 49. Due to Synchrony and Experian's failure to investigate, they each further
16 failed to correct and update Plaintiff's information as required by 15 U.S.C.
17 § 1681s-2(b)(1)(E), thereby causing continued reporting of inaccurate
18 information in violation of 15 U.S.C. § 1681-s(2)(b)(1)(C).
- 19 50. Plaintiff's continued efforts to correct Synchrony and Experian's erroneous
20 and negative reporting of the Debt by communicating Plaintiff's dispute
21 with Synchrony and Experian were fruitless.
- 22 51. Synchrony and Experian's continued inaccurate and negative reporting of
23 the Debt in light of its knowledge of the actual error was willful.
- 24 52. Synchrony and Experian's inaccurate and negative reporting damaged
25 Plaintiff's creditworthiness.
- 26 53. By inaccurately reporting account information relating to the Debt after
27 notice and confirmation of its errors, Synchrony and Experian failed to take
28 the appropriate measures as determined in 15 U.S.C. §§ 1681-s(2)(b)(1)(D)
and (E).

FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681 *ET SEQ.* (FCRA)

54. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

55. The foregoing acts and omissions constitute numerous and multiple willful, reckless or negligent violations of the FCRA, including but not limited to each and every one of the above-cited provisions of the FCRA, 15 U.S.C. § 1681.

56. As a result of each and every willful violation of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(1); statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from Defendants.

57. As a result of each and every negligent noncompliance of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681o(a)(1); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681o(a)(2) from Defendants.

PRAYER FOR RELIEF

Plaintiff respectfully requests the Court grant Plaintiff the following relief against Defendants:

FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681 *ET SEQ.* (FCRA)

- an award of actual damages pursuant to 15 U.S.C. § 1681n(a)(1);

- award of statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
- an award of punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2);
- award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1) against Defendants for each incident of negligent noncompliance of the FCRA; and
- any other relief the Court may deem just and proper.

TRIAL BY JURY

58. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: February 8, 2016

Respectfully submitted,

BY: /s/ RYAN L. MCBRIDE
RYAN L. MCBRIDE, ESQ.
ATTORNEY FOR PLAINTIFF